

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1902.02
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	April 1, 2002
DATE OF REPORT:	May 17, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	June 18, 2002

COMPLAINT ISSUES:

Whether the Monroe County Community School Corporation violated:

511 IAC 7-21-2(a) by failing to use appropriately licensed or certified personnel to conduct an evaluation of the student.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written when a substitute teacher was assigned to the student's class in the Fall 2001, specifically failing to implement behavior modifications.

511 IAC 7-4-4 by failing to make available special education and related services to a student with a disability during the time the student was home schooled.

During the course of the investigation, additional issues were identified:

511 IAC 7-17-8 by unilaterally developing and implementing a behavioral intervention plan before it is agreed to in a case conference committee and incorporated into the Student's IEP.

511 IAC 7-27-7(a) by failing to implement the Student's IEP as written, specifically, failing to implement the last agreed upon IEP when the parent did not consent to a change in placement and services as proposed by the School at the September 24, 2001, case conference meeting.

511 IAC 7-27-6 by failing to include length, frequency, location, and duration of services in the IEPs of September 24 and November 7, 2001, and February 18, 2002.

511 IAC 7-27-5(d) by failing to obtain parental consent before changing the Student's placement to homebound instruction on September 24, 2001, and changing the special education and related services on November 7, 2001.

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the case conference committee report and IEP within ten business days of the February 18, 2002, case conference meeting.

An extension of time until May 8, 2002, was granted on April 30, 2002, to allow the investigator sufficient time to obtain needed information due to the number and complexity of the issues involved. Another

extension of time until May 17, 2002, was granted on May 8, 2002, due to the number and complexity of the issues involved.

FINDINGS OF FACT:

1. The Student is seventeen years old and attends the local high school (the "School"). The Student is eligible for special education and related services as a student with a learning disability.
2. The Student was evaluated on December 5, 2000. At the time of the evaluation, the individual conducting it was serving in the local school corporation as part of a practicum experience to fulfill requirements for a doctorate. The individual conducting the evaluation had a bachelor's degree in psychology and a master's degree in educational psychology. The evaluation was conducted under the supervision of one of the school's licensed psychologists. The American Psychological Association approves test administration by trainees provided there is proper supervision by a licensed person. Furthermore, the individual conducting the evaluation had the necessary requirements to administer the assessments.
3. The School unilaterally developed and implemented a behavioral intervention plan ("BIP") for the Student on January 16, 2001. However, the BIP was not agreed to by the parent or incorporated into the Student's IEP until February 20, 2001. The BIP outlines the responsibilities of the Student and any adult personnel who may supervise the Student. The targeted behavior is the Student's uncontrolled verbal outbursts that disrupt class. The BIP states that the Student should take more responsibility for asking the teacher if he can obtain a pass and talk to the teacher of record ("TOR"). Any adult personnel supervising the Student is to ask if the Student needs to be removed to prevent an outburst. On September 13, 2001, there was a substitute teacher in the Student's resource class. According to both the School and the Complainant, the Student got angry, had an uncontrolled verbal outburst that displayed the use of profanity, and walked out of the class. The Student ended up in the office of the School's assistant principal, as a result of the substitute teacher following the Student into the hall and sending the Student to the office. The Student did not receive a pass to have a "cooling off" period by talking with the TOR.
4. The Student was home schooled from April 1999 until the end of that school year, the Student's final year of middle school. The decision to home school the Student was a unilateral decision made by the parent. The Student returned to public school at the beginning of the next school year, August 1999. The School failed to offer or make available any special education services to the Student while the Student was home schooled.
5. On September 24, 2001, as a result of the Student's behavior and several other referrals for similar behaviors and truancy, the case conference committee ("CCC") convened to conduct a manifestation determination. The CCC determined that the Student's behavior was not a manifestation of the Student's disability. However, the CCC decided to change the Student's placement and remove the Student to a homebound setting for the remainder of the term, which ended November 14, 2001. According to the director, the assistant principal determined "that it was in everyone's best interest that [the Student] not be in a school environment at that time." Although the parent did not consent to this change of placement, the change was implemented by the School. At the CCC convened on November 7, 2001, a continuation of the homebound instruction was recommended. The parent did not consent to these services. The Student did not return to school until March 4, 2002.

6. From late September 2001, until the November 7, 2001, CCC meeting, the Student did not attend the vocational education class the Student had been enrolled in prior to September 24, 2001. At the time the Student's placement was changed to homebound, the Student's IEP noted vocational education as a needed transition service, but the IEP does not identify this as a service to be provided. The local career center, which had been providing vocational education, presumed the Student was essentially expelled and no longer enrolled at the School because the School's assistant principal had explained that any kind of regular school environment was not appropriate for the Student. As a result, the Student missed achieving credit for the vocational education class. This was realized at the CCC held on November 7, 2001. The CCC agreed to arrange for the Student to begin a work-study program in addition to the Student's homebound instruction, which consists of academic instruction with a licensed teacher for two hours daily in the local public library.
7. Prior to September 24, 2001, the Student's current placement, the Student attended general education classes with resource room support. The IEP, dated September 24, 2001, includes the School's recommendation for homebound instruction from September 24 through November 14, 2001. A report attached to the IEP indicates the Student will receive "approximately" two hours per day of instruction in various subjects. The parent did not consent to this change of placement. The IEP dated November 7, 2001, does not identify homebound instruction, but states only "direct support for English and history due to [the Student's] reading level. It also states the Student will receive a related service of counseling for anger management, but the IEP does not identify length, frequency, or location for either the direct or related service. The duration is indicated as recommended in the IEP.
8. On February 18, 2002, a CCC meeting was held to discuss whether the Student was ready to return to school full-time. The CCC decided that the Student indeed was ready to return. The Student returned to school for the beginning of the third term, March 4, 2002. The IEP states the Student is to receive direct support for English and history and that resource class is recommended. The IEP includes the related service for counseling. No length, frequency, or location is identified for any of the services. There is no indication that the parent consented to the IEP. The parent received a copy of this IEP on April 2, 2002.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the Student's reevaluation on December 5, 2000, was conducted by a doctoral student under the supervision of a licensed school psychologist. No violation of 511 IAC 7-21-2(a) is found.
2. Finding of Fact #3 indicates that the Student did have a BIP in place and that the BIP was not implemented by the supervising substitute teacher when the Student engaged in a vocal emotional outburst and left the class. Finding of Fact #3 also indicates that the BIP was unilaterally developed and implemented before it was agreed to in a CCC, held on February 20, 2001, and incorporated into the Student's IEP. Therefore, a violation of 511 IAC 7-27-7(a) is found in regard to the BIP not being implemented, and a violation of 511 IAC 7-17-8 is found with regard to the unilateral development of the BIP.
3. Finding of Fact #4 indicates that the Student was home schooled beginning in April 1999 as a result of a unilateral decision made by the parent. The Student returned to school in August 1999. A student who is home schooled is considered to be a student enrolled in a private school. In 1999, 511 IAC 7-4-4 governed the provision of services to students in private schools and required the

public school to make special education and related services available to the private school student. The School failed to do this, therefore, a violation of 511 IAC 7-19-1(b) is found.

4. Findings of Fact #5, #6, and #7 indicate that, on September 24, 2001, the CCC recommended a change of placement to homebound instruction, and the School implemented the change of placement without obtaining the parent's consent. The School implemented the September 24, 2001, IEP, rather than its predecessor, the last agreed upon IEP. Further, the IEPs dated November 7, 2001, and February 18, 2002, fail to indicate length, frequency, or location of services. Therefore, a violation of 511 IAC 7-27-7(a) is found for the School's failure to implement the last agreed upon IEP, and a violation of 511 IAC 7-27-6 is found for the deficiencies in the IEP. Finally, a violation of 511 IAC 7-27-5(d) is found for the School's failure to obtain parental consent prior to changing the Student's placement.
5. Finding of Fact #8 indicates that the parent was not provided with a copy of the CCC report and IEP within ten business days of the February 18, 2002, CCC meeting. The parent received a copy of the IEP on April 2, 2002. Therefore, a violation of 511 IAC 7-27-5(c) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Monroe County Community School Corporation shall:

1. Immediately convene the CCC to review and revise the Student's IEP. The CCC shall identify the nature and amount of compensatory services to provide to the Student, including extended school year services as appropriate. The CCC shall identify the needed transition services and how those services shall be provided. The IEP shall clearly indicate the length, frequency, and location of all identified special education and related services. Finally, the CCC shall review the Student's need for a BIP as part of the IEP. A copy of the CCC report and the IEP shall be submitted to the Division no later than June 14, 2002.
2. Review and revise the policies and procedures necessary for informing substitute teachers about the needs of students with disabilities in class. Send a memorandum to all appropriate personnel describing the policies and procedures. A copy of the memorandum and a list of all personnel who received it shall be sent to the Division no later than June 14, 2002.
3. Send an assurance statement that:
 - a. the School will utilize the CCC to develop a BIP;
 - b. services will be made available to students with disabilities who are home schooled pursuant to 511 IAC 7-19; and
 - c. a student's placement will not be changed in the absence of parental consent.
 The statement shall be submitted to the Division no later than June 14, 2002.
4. Send a written reminder to all appropriate personnel regarding the requirements of 511 IAC 7-27-5(c) with respect to the School's failing to provide the parent with a copy of the CCC report and IEP within ten business days of the CCC meeting. A copy of the written memorandum and a list of personnel to whom the memorandum was sent shall be submitted to the Division no later than June 14, 2002.

DATE REPORT COMPLETED: May 17, 2002